

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PEDRO MALAVE and U.S. POSTAL SERVICE,
POST OFFICE, Mayaguez, P.R.

*Docket No. 96-2357; Submitted on the Record;
Issued December 1, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability commencing September 12, 1995, causally related to his August 10, 1995 accepted lumbosacral strain.

On August 10, 1995 appellant filed a traumatic injury claim (Form CA-1)¹ alleging that on that day he suffered low back pain due to "lifting heavy parcel."² Appellant stopped work on August 11, 1995 and was on sick leave through August 20, 1995. On August 21, 1995 appellant returned to work with restrictions of no lifting or carrying, sitting three hours a day, standing three hours a day and walking two hours a day. On October 10, 1995 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that on September 12, 1995 he sustained a recurrence of total disability causally related to the August 10, 1995 accepted lumbosacral strain. He claimed that while he was restricted from picking up parcels and was to alternate standing, sitting and walking, that he worked in an area where no one was around to help him and when he requested help it was denied; therefore, he was forced to handle heavy parcels which was detrimental to his health and worsened his condition. On the reverse side of the form, the employing establishment stated that "management complied with medical limitations." The employing establishment further stated "management was aware of [appellant's] medical condition. Management provided, assisted and supported [appellant's] work limitations when deemed necessary in conjunction to his work assignment. Furthermore, management had instructed [appellant] to please inform his immediate supervisor when assistance was required. [Appellant] was aware that management was dealing in good faith." On October 17, 1995 the record was updated to include a duty status report (CA-17) dated September 12, 1995 by Dr. Dennis F. Suarez, a Board-certified internist, who specializes in rheumatology; and a

¹ Two CA-1 forms were filed for the same injury, both dated August 10, 1995.

² The record indicates that the Office of Workers' Compensation Programs accepted that appellant had sustained a lumbosacral strain in the performance of duty on August 10, 1995.

September 12, 1995 authorization for examination and/or treatment (CA-16) completed by Dr. Suarez.

By letter dated October 24, 1995, the Office requested factual and medical information from appellant and factual information from the employing establishment.

By decision dated January 18, 1996, the Office denied appellant's recurrence of disability claim on the grounds that the evidence of record failed to establish that the claimed recurrence on September 12, 1995 was causally related to the August 10, 1995 accepted lumbosacral strain.

By letter dated February 16, 1996, appellant requested reconsideration of the January 18, 1996 decision. In support of the request for reconsideration, appellant submitted medical reports and claim forms detailing his prior medical history.

By decision dated April 24, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence was of no probative value as it failed to address the issue of recurrence of disability commencing September 12, 1995 and, therefore, was insufficient to warrant modification of the prior decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability commencing on or after September 12, 1995, causally related to his August 10, 1995 accepted lumbosacral strain.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the accepted employment injury and supports that conclusion with sound medical reasoning.³

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirement.⁴

The medial evidence submitted in support of his claim for recurrence of disability commencing September 12, 1995 consists of a duty status report (Form CA-17) dated September 12, 1995 by Dr. Suarez, a Board-certified internist, who specializes in rheumatology. Dr. Suarez reported his findings of tenderness and spasm of the cervical, thoracic and lumbar

³ *Lourdes Davila*, 45 ECAB 139 (1993); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁴ *Terry R. Hedman*, 38 ECAB 222 (1986).

spine, diagnosed low back pain, indicated other disabling condition of spondylitis and indicated appellant was not advised to return to work; a September 12, 1995 authorization for examination and/or treatment (Form CA-16) by Dr. Suarez giving a history of “years history of pain at all spine with severe spasm which gradually worsened,” reported findings of sacroiliitis, diagnosing probable ankylosing and checking “yes” to the question that he believed the condition was caused or aggravated by the employment activity described, and indicating that appellant was “unable to return to work”; and medical reports and claim forms regarding appellant’s prior medical history dating back to 1976.

On the duty status report dated September 12, 1995, Dr. Suarez indicated that the history of injury given by appellant agrees with that shown in item five. He diagnosed low back pain and indicated that appellant was unable to work. However, Dr. Suarez failed to address a causal relationship between appellant’s claimed recurrence of disability on September 12, 1995 and the accepted August 10, 1995 lumbosacral strain. Also, he did not explain why appellant was unable to perform his light-duty job requirement. Therefore, Dr. Suarez’s duty status report is insufficient to establish appellant’s recurrence of disability claim.

On a September 12, 1995 authorization for examination and/or treatment (Form CA-16) Dr. Suarez gave a history of a year of pain in all areas of appellant’s spine with severe spasm, reported his findings of sacroiliitis, diagnosed “probable ankylosing,” checked “yes” that he believed the condition found was caused or aggravated by appellant’s employment activity and indicated that appellant was “unable to return to work.” He failed to provide supportive rationale for his opinion. Dr. Suarez also failed to causally relate appellant’s disabling conditions to the August 10, 1995 accepted employment-related injury. He failed to explain why appellant was unable to perform his light-duty job requirement. Therefore, Dr. Suarez’s authorization for examination and/or medical treatment, dated September 12, 1995, is insufficient to establish appellant’s recurrence of disability claim.

The medical reports and claim forms submitted by appellant regarding his prior medical history predate the claimed recurrence of disability on September 12, 1995 and are of no probative value as they failed to address the claimed recurrence of disability on that date or to causally relate any disabling condition to appellant’s August 10, 1995 accepted lumbosacral strain. Therefore, the reports and claim forms are insufficient to establish appellant’s recurrence of disability claim. The Office advised appellant of the specific type of evidence needed to establish his recurrence of disability claim, but such evidence has not been received. The Board finds that the evidence of record is insufficient to meet appellant’s burden of proof.

The decisions of the Office of Workers' Compensation Programs dated April 24 and January 18, 1996 are affirmed.

Dated, Washington, D.C.
December 1, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member